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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2011-1013]

RIN 1625-AA09

Drawbridge Operation Regulation; Saginaw River, Bay City, MI

AGENCY: Coast Guard, DHS.

ACTION: Final Rule.

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SUMMARY: The Coast Guard is revising the drawbridge opening schedule for the Lake State Railway Bridge at mile 3.10, the Independence Bridge at mile 3.88, the Canadian National Railway Bridge at mile 4.94, the Liberty Street Bridge at mile 4.99, the Veterans Memorial Bridge at mile 5.60, and the Lafayette Street Bridge at mile 6.78, all over the Saginaw River at Bay City, MI. The previous regulation was confusing, outdated, and unnecessarily restrictive for both commercial and recreational vessels. The revised regulation will simplify the regulatory language, increase access through the drawbridges for all vessels, and provide for the reasonable needs of all traffic.

DATES: This rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments and related materials received from the

public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2011-1013 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1013 in the "Keyword" box, and then clicking "Search". This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Lee Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone (216) 902-6085, e-mail [lee.d.soule@uscg.mil](mailto:lee.d.soule@uscg.mil). If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 8, 2011, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Saginaw River, Bay City, MI, in the Federal Register (76 FR 76637). We received one comment in response to the proposed rule supporting the NPRM as written. No public meeting was requested, and none was held.

### Basis and Purpose

Lake Carriers Association (LCA), an organization representing U.S. shipping companies on the Great Lakes, requested that the existing drawbridge regulation for Saginaw River be reviewed and changed to make the regulation easier to understand and to remove restrictive drawbridge schedules for commercial vessels. The existing regulation was reviewed in its entirety for all drawbridges, vessel types, dates, and hours of operation.

Lake State Railway Bridge at mile 3.10 is a swing bridge that provides 7 feet vertical clearance in the closed position and unlimited clearance in the open position. The Independence Bridge at mile 3.88 is a bascule bridge that provides 22 feet vertical clearance in the closed position and unlimited clearance in the open position. The Canadian National Railway (CN RR) Bridge at mile 4.94 is a swing bridge that provides 8 feet of vertical clearance in the closed position and unlimited clearance in the open position. The Liberty Street Bridge at mile 4.99 is a bascule bridge that provides 25 feet of vertical clearance in the closed position and unlimited clearance in the open position. The Veterans Memorial Bridge at mile 5.60 is a bascule bridge that provides 15 feet of vertical clearance in the closed position and unlimited clearance in the open position. The Lafayette Street Bridge at mile 6.78 is a

bascule bridge that provides 20 feet vertical clearance in the closed position and unlimited clearance in the open position. There is no alternate waterway for vessels entering or departing Saginaw River.

The draws of the Lake State Railway and Canadian Railway Bridges currently open on signal for all vessel traffic that requires a bridge opening, except that from December 16 through March 15 the bridges open on signal if at least 12 hours advance notice is provided.

The draws of the Independence Bridge, Liberty Street, Veterans Memorial, and Lafayette Street drawbridges open on signal from March 16 through December 15, except as follows: the draws need not open for the passage of vessels less than 50 gross tons from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m., except Saturdays, Sundays, and holidays observed in the locality. The draws need not open for the passage of downbound vessels over 50 gross tons from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m., except on Sundays, Federal holidays, and holidays observed in the locality. From 8 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the Independence Bridge and Veterans Memorial bridges need not open for recreational vessels except from three minutes before to three minutes after the hour and half-hour, and the Liberty Street and Lafayette Street bridges need not open for recreational vessels except from three minutes

before to three minutes after the quarter-hour and three-quarter hour. Currently, the draws of these bridges shall open on signal from December 16 through March 15 if at least 12 hours advance notice is provided.

The proposed drawbridge schedules and revised regulations were developed with all known stakeholders, including; Lake Carriers Association, Canadian Shipowners Association, local Coast Guard units, City of Bay City, MI, Michigan Department of Transportation (MDOT), Bay Harbor Marina, Pier 7 Marina, Liberty Harbor Marina, and Bay City Yacht Club.

#### Discussion of Comments and Changes

The Coast Guard received one comment supporting the NPRM as written. No changes to the proposed regulation have been made in this final rule. The revised regulation reflects current conditions and provides for the reasonable needs of all modes of transportation.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning

and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule increases access through the drawbridges for all entities compared to the existing regulation and drawbridge schedule. All known marina owners and small entities were consulted during the development of this revised rule. Additionally, all vessels that do not require bridge openings may transit the drawbridges at any time.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), in

the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

#### Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will

not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on

the relationship between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that

are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under figure 2-1, paragraph (32)(e), of the instruction.

Under figure 2-1, paragraph (32)(e), of the instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard revises 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to

read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.647 to read as follow:

§117.647 Saginaw River.

(a) The draws of the Lake State Railway Bridge, mile 3.10, and the Canadian National Railway Bridge, mile 4.94, both in Bay City, shall open on signal; except that from January 1 through March 31, the draws shall open on signal if at least 12 hours advance notice is provided.

(b) The draws of the Independence Bridge, mile 3.88, Liberty Street Bridge, mile 4.99, Veterans Memorial Bridge, mile 5.60, and Lafayette Street Bridge, mile 6.78, all in Bay City, shall open on signal, except as follows:

(1) From April 15 through November 1, between the hours of 6:30 a.m. and 7 p.m., Monday through Friday, except federal holidays, the draws of the Independence and Veterans Memorial Bridges need open for the passage of recreational vessels only from three minutes before to three minutes after the hour and half-hour, and the Liberty Street and Lafayette Street bridges need open for the passage of recreational vessels only from three minutes before to three minutes after the quarter-hour and three-quarter hour.

(2) From January 1 through March 31, the draws of these bridges shall open on signal if at least 12 hours advance notice is provided.

Dated: March 12, 2012

M. N. PARKS  
Rear Admiral, U. S. Coast Guard  
Commander, Ninth Coast Guard District

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